

SUPERIOR COURT
OF THE
STATE OF DELAWARE

WILLIAM C. CARPENTER, JR.
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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WILMINGTON, DE 19801-3733
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January 6, 2009

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RE: State v. Orlando Rodriguez
ID No. 0807011823

Submitted: December 1, 2008
Decided: January 6, 2009

On Defendant's Motion to Withdraw Guilty Plea - DENIED

Dear Counsel:

The Court has before it the defendant's Motion to Withdraw Guilty Plea. On October 14, 2008 the defendant pleaded guilty to a lesser included offense of Unlawful Sexual Contact Third Degree, a Class A misdemeanor. Before addressing the legal aspects of the Motion, the Court believes it is important to correct some of the "community" information or advice asserted by the defendant in his Motion.

First, as a result of the defendant's plea, he is subject to the lowest level of sex offender registration required under the law. Unlawful Sexual Contact Third

Degree is classified as a Tier 1 offense which only requires registration once a year. In addition, there is no requirement of community notification for Tier 1 offenders, and the defendant is permitted to petition the Court after ten years for relief of the registration requirements. In contrast, if the defendant was found guilty of the original charge of Unlawful Sexual Contact Second Degree, he would be required to register twice a year, community notification would be required, and no relief from the registration requirement would be available under 11 *Del. C.* §4121(e)(2)(b) because the victim was a minor at the time of the offense. Therefore the plea entered by the defendant offers the best option for resolving the defendant's concerns regarding community notification and disruption of his living arrangements unless he were acquitted.

Secondly, the plea agreement reflects some agreement by the parties that the defendant would have "no unsupervised contact" with children under the age of 16. While this is set forth in the plea agreement, it is important to note there is no requirement that the Court impose this condition, particularly if it affects the present living arrangement with the defendant's family. The defendant's counsel is free to argue the hardship that would be created in spite of the language in the plea agreement.

Finally, there is no legal impediment to the defendant's employment that the Court is aware of. If he has chosen to disclose the offense, an employer has discretion to decide whether to continue to employ the defendant. However, from the information contained in the Court's papers regarding the defendant's employment history, it does not appear that the defendant is employed in a career where there is a legal mandate that he disclose the offense or the registration requirements.

Having addressed the defendant's misguided advice from his "community," the Court, in considering the Motion to Withdraw Guilty Plea is required to consider five factors:

- 1) Was there a procedural defect in taking the plea;
- 2) Did defendant knowingly and voluntarily consent to the plea agreement;
- 3) Does defendant presently have a basis to assert legal innocence;
- 4) Did defendant have adequate legal counsel throughout the proceedings; and
- 5) Does granting the motion prejudice the State or unduly inconvenience the Court.¹

¹ *State v. Cabrera*, 891 A.2d 1066, 1069-70 (Del. Super.) (citing *State v. Friend*, 1994 WL 234120, at *2 (Del. Super.)); *Scarborough v. State*, 938 A.2d 644, 649 (Del. 2007).

First, the Court can find no procedural defect in taking the plea. The plea agreement clearly sets forth the agreement between the parties, and the defendant has executed the truth in sentencing guilty plea form. Upon entering the plea, the Court carefully reviewed the plea and its ramifications including the requirement that the defendant register as a Tier 1 offender. Nothing more is required.

Secondly, there is nothing to suggest that the defendant's plea was not voluntary or that he was not aware of the consequences of the plea. There is no requirement beyond notifying the defendant of the sex offender tier classification that must be covered during the plea colloquy, and it appears from the defendant's Motion that he discussed his concerns with his attorney before entering into the plea agreement. Unfortunately, the defendant appears to rely more on the advice of unnamed strangers than that of his very experienced and competent counsel.

Third, the defendant does assert his innocence in his Motion, but the Court considers such assertions suspect in light of the admissions made by the defendant to the Court during the plea colloquy. The police report reflects that the victim immediately reported the incident to her sister and called the police after the defendant left the apartment. It appears he made admissions to the victim's sister who was his girlfriend at the time, and the Court can only conclude his newfound "innocence" is more a reaction to the consequences of his plea rather than a true assertion that the offense never occurred. In addition, the Court will not dismiss lightly the responses given by the defendant during the plea colloquy unless there is a clear and reasonable explanation for the change in position. None has been given here.

The defendant also appears to have received excellent legal representation throughout this process. Not only has counsel been able to negotiate a plea agreement that minimizes his criminal liability, but it also addresses all the concerns set forth in the defendant's Motion.

Finally, the Court would have difficulty finding that the State would be prejudiced by the granting of the Motion as the witness would still be available and it appears they could still proceed to trial.

In determining whether to grant a motion to withdraw, the Court must

consider and weigh separately each of the above factors and decide whether together they support a finding that the defendant has provided a fair and just reason to grant the motion.² After carefully reviewing each factor, the Court can only conclude the defendant has failed to meet his burden, and thus the Motion to Withdraw Guilty Plea is denied. The concerns the defendant raises in his Motion are based upon a misinterpretation of the law by his “community” and his desire to withdraw his guilty plea would in fact result in the realization of all the concerns he now has if he was found guilty of the original charges. The defendant has admitted his guilt to the Court, and all of the consequences of his accepting the plea were explained to him by counsel or the Court prior to entering his plea. As such, the Court can find no reason that would justify nullifying the plea that has been entered.

As a result, the defendant’s Motion to Withdraw Guilty Plea is denied, and sentencing will proceed forward on Friday, January 9, 2009.

Sincerely yours,

/s/ William C. Carpenter, Jr.

Judge William C. Carpenter, Jr.

WCCjr:twp

cc: Prothonotary

² *State v. Cabrera*, 891 A.2d at 1069-70 (citing *Patterson v. State*, 684 A.2d 1234, 1238 (Del. 1996)).